

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to contested cases and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 11, “Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 10A.104, 10A.801 and 724.21A(6).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 10A.104, 10A.801, 17A.7(2) and 724.21A(6).

Purpose and Summary

The Department completed a review of Chapter 11 in accordance with the requirements of Iowa Code section 17A.7(2). This proposed rule making adds references to filing appeals through the Administrative Electronic Document Management System (AEDMS) pursuant to Chapter 16, eliminates redundancy by reference to Iowa Code chapter 17A and Chapter 10, and eliminates outdated citations.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on January 3, 2023. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrules 11.2(1) and 11.2(2) as follows:

11.2(1) *Written appeal.* The appeal shall be in writing or filed electronically pursuant to 481—Chapter 16 and should state the reasons for rebutting the denial, suspension, or revocation.

11.2(2) *Filing of appeal.* Within 30 days of the applicant’s or permittee’s receipt of the agency’s decision, the applicant or permittee shall file the appeal, a copy of the agency’s written decision, and a fee of \$10 with the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, 502 East 9th Street, Des Moines, Iowa 50319, or electronically pursuant to 481—Chapter 16.

ITEM 2. Amend subrule 11.3(1) as follows:

11.3(1) *The* In addition to the information set forth in Iowa Code section 17A.12(2), the notice of hearing shall contain the following information:

~~a.~~ A statement of the time, place, and nature of the hearing;

~~b.~~ A statement of the legal authority and jurisdiction under which the hearing is to be held;

~~c.~~ A reference to the agency decision on appeal;

~~d.~~ a. Identification of the parties;

~~e.~~ b. Reference to the procedural rules governing the contested case proceeding;

~~f.~~ c. Identification of the administrative law judge, including the judge’s contact information;

~~d.~~ d. Requirements for the filing and service of a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding;

~~g.~~ e. Notification that failure to appear and participate in the contested case proceeding may result in the entry of a default judgment;

~~h.~~ f. Notification that the applicant or permittee shall be required to pay the agency’s reasonable attorney fees and court costs if the agency’s decision is affirmed in the contested case proceeding or in subsequent judicial review of the proceeding, or if the applicant or permittee withdraws or dismisses the contested case proceeding or subsequent judicial review action; and

~~i.~~ g. Notification that the agency shall be required to pay the applicant’s or permittee’s reasonable attorney fees and court costs if it is determined in the contested case proceeding or in subsequent judicial review of the proceeding that the applicant or permittee is eligible to be issued or to possess the permit that was denied, suspended, or revoked.

ITEM 3. Amend rule 481—11.6(17A) as follows:

481—11.6(17A,724) *Service and filing of documents.* Service and filing of documents shall be in accordance with rule 481—10.12(17A).

11.6(1) *When service is required.* ~~Every pleading, motion, or other document filed in the contested case proceeding shall be served on each of the parties to the proceeding, including the agency. Except for an application for rehearing as provided in rule 481—11.14(17A) and Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.~~

~~11.6(2) Methods of performing service.~~ Service upon a party represented in the contested case proceeding by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering, mailing, or transmitting by facsimile (fax) or by electronic mail (e-mail) a copy to the party or attorney at the party's or attorney's last known mailing address, fax number, or e-mail address. Service by first-class mail is complete upon mailing. Service by fax or electronic mail is complete upon transmission unless the party making service learns that the attempted service did not reach the person to be served.

~~11.6(3) Filing with the division.~~ Every pleading, motion, or other document in the contested case proceeding shall be filed with the division. All documents that are required to be served upon a party shall be filed simultaneously with the division.

~~a.~~ Except where otherwise provided by law, a document is deemed filed with the division at the time it is:

~~(1) Delivered to the division at the Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa, and date-stamped received;~~

~~(2) Delivered to an established courier service for immediate delivery to the division;~~

~~(3) Mailed to the division by first-class mail or by state interoffice mail so long as there is adequate proof of mailing; or~~

~~(4) Transmitted by facsimile (fax) to (515)281-4477, by electronic mail (e-mail) to adminhearings@dia.iowa.gov, or by other electronic means approved by the division, as provided in subrule 11.6(3), paragraph "b."~~

~~b.~~ All documents filed with the division pursuant to these rules, except a person's written appeal pursuant to rule 481—11.2(724), may be filed by facsimile (fax), electronic mail (e-mail), or other electronic means approved by the division. A document filed by fax, e-mail, or other approved electronic means is presumed to be an accurate reproduction of the original. If a document filed by fax, e-mail, or other approved electronic means is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax, e-mail, or other approved electronic means shall be the date the document is received by the division. The division will not provide a mailed file-stamped copy of documents filed by fax, e-mail, or other approved electronic means.

~~11.6(4) Proof of mailing.~~ Adequate proof of mailing includes the following:

~~a.~~ A legible United States postal service postmark on the envelope;

~~b.~~ A certificate of service;

~~c.~~ A notarized affidavit; or

~~d.~~ A certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Department of Inspections and Appeals, Administrative Hearings Division, Wallace State Office Building, Third Floor, 502 East Ninth Street, Des Moines, Iowa 50319, and to the names and addresses of the parties listed below by depositing the same in a United States post office mailbox with correct postage properly affixed.

(date)

(signature)

This rule is intended to implement Iowa Code section 724.21A.

ITEM 4. Amend rule 481—11.7(17A) as follows:

481—11.7(17A) Witness lists and exhibits. No later than five days before the hearing, a party shall serve on all parties and shall file with the division a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding. If a party fails to serve on all parties and file with the division a witness list or any exhibit five days before the hearing as set forth in the notice of hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing.

ITEM 5. Amend rule 481—11.8(17A) as follows:

481—11.8(17A) Evidence. ~~The administrative law judge shall rule on the admissibility of evidence and may take official notice of facts in accordance with applicable requirements of law. Evidence in the proceeding shall be confined to the issues for which the parties received notice prior to the hearing. Evidence shall be governed by rule 481—10.21(17A).~~

ITEM 6. Amend rule 481—11.11(10A), parenthetical implementation statute, as follows:

481—11.11(10A,724) Attorney fees, court costs, and contested case costs.

ITEM 7. Amend rule **481—11.11(10A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 10A.801 as amended by 2017 Iowa Acts, House File 640; and section 724.21A as amended by 2017 Iowa Acts, House File 517.

ITEM 8. Amend rule 481—11.14(17A) as follows:

481—11.14(17A) Rehearing. ~~An applicant, permittee, or agency aggrieved by an administrative law judge's final decision rescinding or sustaining the agency's denial, suspension, or revocation may request rehearing. A request for rehearing shall be made by filing an application for rehearing with the division within 20 days of the date of the administrative law judge's final decision and must state the specific grounds for the rehearing and the relief sought. If the only relief sought relates to the award of attorney fees, the application must include any argument and relevant evidence to be considered on rehearing. An application for rehearing shall be deemed to have been denied unless the administrative law judge grants the application within 20 days after its filing. A request for rehearing is not necessary to exhaust administrative remedies. A request for rehearing may be filed in accordance with Iowa Code section 17A.16(2).~~

This rule is intended to implement Iowa Code sections 724.21A as amended by 2017 Iowa Acts, House File 517; and section 17A.16.